

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 523 of 1985

WITH

FIRST APPEAL NO 525 of 1985

WITH

FIRST APPEAL NO 527 of 1985

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FIRST APPEAL NO 528 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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G S R T C

Versus

MANUBEN WD/O DIPSING K GADHVI

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Appearance:

In all matters :

MR HARDIK C RAWAL for Petitioner

NOTICE SERVED for Respondent No. 1, 9,10

MR RAJNI H MEHTA for Respondent No. 6

MR HM PARIKH for Respondent in FA 525/1985.

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 06/07/2000

ORAL JUDGEMENT

1. All these appeals arise from the impugned judgment and award dated 27/6/1984 rendered by the Motor Accident Claim Tribunal (Main), District Kheda at Nadiad. The appellant in all these appeals is Gujarat State Road Transport Corporation being the owner of the S.T. Bus in question. Its principal grievance against the impugned award is with regard to finding of negligence rendered by the Ld. Tribunal. The submissions made by the learned advocate appearing for the appellant - Gujarat State Road Transport Corporation also run and revolve round this question. Mr. Hardik Raval's argument is that the driver of the tractor trolley should have been held to be solely negligent for the accident in question and in the alternative atleast 50% or 20% of contributory negligence should have been attributed to him. In order to appreciate the submissions made by Mr. Raval in these appeals, brief facts of the claim petitions in respect of the accident in question might be noted in the first instance.

2. It is the case of the applicants - claimants who were travelling in the S.T. Bus bearing No. GRT 7621 driven by its driver Yasinmiya, that when the S.T. Bus reached near the sim of village Vadola, a tractor driven by Jayantigar was coming from the opposite direction. Both the vehicles dashed against each other on their respective right sides and the collision took place which was the result of negligence of both the drivers. The tractor and trolley were insured with the National Insurance Company Limited - respondent no. 9 herein.

On the other hand the applicants working as labourers in the tractor alleged that both the respective drivers were driving the vehicles ignoring rules of the road and neither reduced the speed of the respective vehicle. If they had taken care, they could have avoided the accident.

3. Ld. Tribunal, upon appreciation of the evidence, held that S.T. Bus driver was solely negligent for causing the accident in question. He held that such finding would find support from copy of the Panchnama exh. 49, copy of the F.I.R. exh. 109 and photographs exh. 139, as also from the oral evidence when scrutinised in its true perspective. It has been submitted by Mr. Hardik Raval, learned advocate

appearing for the appellant - Corporation that the Ld. Tribunal has failed to appreciate the stand of the respective claimants saying that drivers of both the vehicles were negligent in not avoiding the accident. He read the observations of the Ld. Tribunal with regard to the eye witnesses, out of whom most were injured applicants. Mr. Raval read para. 27 of the impugned judgment for making good his submission. There the Ld. Tribunal has observed that the injured witnesses named in the said paragraphs deposed that the front right portion of the S.T. Bus dashed with the front right portion of the trolley and the accident took place. The Ld. Tribunal has further observed that none of the witnesses deposed with regard to exact point of place where the accident took place. None of them also deposed that the bus driver or the tractor driver was driving the respective vehicle on the wrong side of the road. The Ld. Tribunal has finally observed that the evidence of all these witnesses will not help in deciding as to whether the accident took place because of the negligent driving of the bus driver or the tractor driver or both. From these observations of the Ld. Tribunal Mr. Raval submitted that the tractor driver should have been held to be atleast contributorily negligent. For the purpose of appreciation of this submission Mr. H.M. Parikh, learned advocate appearing for one of the claimants Jayantibhai Nathabhai in M.A.C.P. No. 37/1982 in First Appeal No. 525 of 1985 read the evidence of the said claimant. Mr. H.M. Parikh submitted from the evidence of this witness, in my opinion rightly, that the witness in clear and no uncertain terms deposed that the bus was driven at a very great speed and its front portion dashed against the right portion of the trolley which was attached to the tractor. It would, therefore, clearly appear that no part of the front portion of the tractor dashed against the front right portion of the S.T. Bus. In his cross-examination on behalf of the appellant Corporation not one question has been asked with regard to excessive speed at which the S.T. Bus driver was driving the bus in question. This sample evidence of one of the injured claimants would clearly indicate that the S.T. Bus was being driven at a very great speed by its driver. This evidence as well as the evidence of all other claimants would further indicate that the point of impact was right portion of the trolley and front right portion of the S.T. Bus. It would, therefore, mean that the bus must have dashed against the rear part of the tractor trolley (trolley being the rear part) when the bus must have been driven at a great speed and the bus driver must have missed assessment with regard to whether the bus would go ahead saving the trolley portion of the

tractor. This would prima facie indicate clear negligence on the part of the S.T. Bus driver. In that view of the matter, the evidence of the claimants as observed by the Ld. Tribunal will not help the cause of the S.T. Corporation as canvassed by the learned advocate in these appeals. Instead, the evidence if read in its true perspective, would lend clear support to the other pieces of evidence on which the Ld. Tribunal has relied. As a matter of fact, the evidence with regard to the speed of the S.T. Bus and the manner in which it struck the rear portion of the tractor trolly deposed to by the injured witnesses would provide primary piece of evidence and would get support from the other pieces of evidence which have been dealt with and discussed at length by the Ld. Tribunal. However, the ultimate conclusion of the Ld. Tribunal would stand fortified from the oral evidence.

4. Mr. Raval next submitted that although the Ld. Tribunal has relied on the Panchnama, he has proceeded to partly discard the same as can be seen from the observations made in para. 40 of the judgment. Ld. Tribunal has proceeded to deal with the Panchnama in para. 40 of the judgment in question as under :-

"The opponent- bus driver while pointing out the place of accident has shown wrong place as the place of accident and therefore it appears as stated in the panchnama of the place of accident that the tractor stopped at a distance of 35 feet after the accident. As a matter of fact, looking to the position of the tractor and the trolly and the broken parts of the S.T. Bus it clearly appears that the tractor stopped there and there after the accident, there was no scope for it to proceed further. The injured applicant Jitarabhai has also stated the same thing that after accident the tractor stopped there and there."

It has been submitted by Mr. Raval that when the Ld. Tribunal has relied upon the Panchnama, it could not have recorded finding that the tractor stopped there and there although in the Panchnama it has been described to have stopped at a distance of 35 ft. Mr. Raval's argument with regard to the aforesaid observations of the Ld. Tribunal cannot be accepted in as much as the Ld. Tribunal has given sound reasons in assessing the evidence of Panchnama coupled with the position of the tractor and the trolly as also the broken parts of the S.T. Bus.

5. Mr. Raval read the whole of the judgment rendered by the Ld. Tribunal. No other point could be presented so as to assail the same. In so far as the quantum of compensation awarded to the respective claimants in these appeals is concerned, there is no contrary suggestion from the side of the appellant. In that view of the matter, without detaining any further with these appeals, following order will have to be passed in all these appeals :-

All the four appeals are hereby dismissed with no order as to cost.

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PVR.